1866. *July* 14. *S. A. No.* 219 *of* 1866

(2.) If so, has the first defendant disproved the existence of such assets, or duly accounted for the same ?

It is difficult to suppose that, in regard to a person in the apparent position in life of the deceased Rajah, there would be any want of *prima facie* evidence that he left assets which ought to have come to the hands of his heirs ; and it is of course that an heir cannot, by giving away the assets to others, defeat the claims of the creditors of his deceased ancestor. As neither of the Lower Courts has apparently taken the right view as to the burden of proof, and the parties have probably been thus misdirected as to the production of evidence, we think it advisable to give liberty to the Lower Court, under Section 355, to receive further evidence from both parties, in order to a satisfactory decision of the above questions.

It is accordingly hereby ordered that the foregoing issues be and the same hereby are referred to the Lower Appellate Court for trial ; the finding thereon together with the evidence, to be returned to this Court within two months from the date of receiving this order.

Suit remanded.

APPELLATE JURISDICTION (*a*)

Referred Case No. 5 *of* 1866.

AMIRTHAMMÁL, widow of LAKSHMANA PILLAI.

against RANGANÁDHA PILLAI and others.

Defendants carried off a quantity of unthreshed paddy from the plaintiff's threshing floor :—*Held,* that the plaintiff's right of action is not barred for 6 years.

The word ' injury' in Clause 2, Sec. I, Act XIV of 1859, means a loss or deterioration caused by a wrongful act, and the phrase ' injury to personal property' means some damage directly caused by some wrongful act to some particular piece of property.

1866. *July* 30. *R. C. No* 5 *of* 1866.

THIS was a case referred for the opinion of the High Court by F. C. Carr, the Judge of the Court of Small Causes at Cuddalore.

No Counsel were instructed.

(*a*) Before Scotland, C. J., and Bittleston, Holloway, Innes and Collett, J. J.

1866. *July* 30. *R. C. No.* 5 *of* 1866.

The Court delivered the following judgment (Scotland, C. J., and Innes, J., dissenting).

JUDGMENT :—It appears from the statement of the case sent up by the Judge of the Small Cause Court, that the defendants in March 1865 carried off a quantity of unthreshed paddy from the plaintiff's threshing floor. The plaintiff brought his action more than a year afterwards, and the defendants plead that the suit is barred by Clause 2, Section I, of the Law of Limitation.

The question for the High Court to decide is, whether this suit for the wrongful conversion of this personal property is a suit "for damages for injury to personal property" within the meaning of Clause 2. If not, it will fall under Clause 16, which gives a period of 6 years for the bringing of any suit for which no other limitation is expressly provided.

The solution of the question depends upon the scope to be given to the word 'injury.' It cannot be taken in its widest sense of "omne id quod non jure fit,' for then Clause 2 would embrace every conceivable harm or damage caused by any wrong, even by a breach of contract.

We are also satisfied that the word 'injury' is not here used in its ordinary legal sense of 'tort' or 'delict.' The subsequent separate enumeration of wrongs to the reputation, to copyright and exclusive privileges, seems to show this, and if this sense had been intended, we should have expected the word to have been used in the plural number.

The wrong in the present case is a trespass in taking and carrying away goods. It would be impossible to extend the word so as to include such a wrong without at the same time giving to it the full legal sense of 'tort.' Moreover the phrase 'injury *to* personal property' does not accurately express the idea of a wrongful act by which a man is merely deprived of the possession of his property, the property itself remaining with the wrong-doer : such an act would rather be an injury *to* the person in relation to his personal property.

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We think that the only meaning which can be given to the word, is the popular one of loss or deterioration caused by a wrongful act. The phrase will then mean some damage directly caused by some wrongful act to some particular piece of property—not the diminution of the whole corpus of a man's property by abstracting or wrongfully detaining a portion of it. In this way only, as it seems to us, will the whole clause be consistent and none of it superfluous. In confirmation of this view we may allude to the improbability that the legislature would have included under the shortest period of limitation, all suits for the recovery of personal property or its value.

The result is, that, in our opinion, Clause 2 does not apply to the case put, and that the plaintiff is entitled to a period of six years under the general provision of Clause 16.

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 49 *of* 1866.

KHÁDAR BHI..... *Appellant.*

RAHIMÁN BHI and another..... *Respondents.*

Under Sec. 45 of the Code of Civil Procedure, a defendant in a suit is entitled to "sufficient time to enable him to appear and answer in person or by pleader."

What may be "sufficient time" in a particular case can only be determined by considering the peculiar circumstances of the case. Where the time allowed is manifestly insufficient, an Appellate Court will interfere.

1866. July 30. R. A. No. 49 of 1866.

THIS was a regular appeal from the decree of J. W. Cherry, the Civil Judge of Ootacamund, in Original Suit, No. 6 of 1866.

The suit was brought for land and other property of the value of several thousand Rupees. The plaint was filed on the 26th of February, and the final disposal was fixed for the 28th of the same month. The Court gave judgment for the plaintiffs, in the following terms :—"The 2nd defendant, a minor, appears by his mother 1st defendant, who having refused to answer any questions put to

(*a*) Present Innes and Collett, J. J.